

This application contains claims 6, 8-11, 25-27, 36 and 37, all of which were rejected in the present Official Action. Applicant believes the rejection should be withdrawn, for reasons that are outlined below. Reconsideration is respectfully requested.

Claims 6, 8-11, 25-27, 36 and 37 were rejected under 35 U.S.C. 103(a) over admitted prior art (as cited in the Background of the present patent application) in view of Thadani et al. (U.S. Patent 5,648,965). Applicant respectfully traverses this rejection.

Claim 6 recites a method for testing a communication network by transmitting both communication test packets and application-associated packets between two traffic agents. A testing center then observes a difference in the arrival characteristics of the communication test packets relative to those of the packets associated with the application. As noted in the specification (page 5), "By comparing the performance of these two types of communications, it is possible to assess whether ... application service problems are due to difficulties in the application or to network communication delays. This type of comparison cannot be carried out by diagnostic systems known in the art" (emphasis added).

The prior art cited by Applicant in the Background section of the present patent application includes two types of tools:

- End-to-end testing tools, which are described in U.S. Patents 5,812,529, 5,838,919 and 5,881,237. These tools simulate communications traffic between network endpoints.
- Application performance measurement tools, which evaluate the performance of existing or new applications as they are introduced into a network. Such tools, however, do not test the network itself independent of specific applications.

As noted by the Examiner (page 2, lines 5-8 in the official Action), the admitted prior art does not describe the step of observing the difference in the arrival characteristics of the communication test packets relative to those of the packets associated with the application. There is not even a suggestion in the prior art that this sort of observation could or should be made.

Thadani describes a method and apparatus for dynamic distributed packet tracing analysis. According to this method, a packet filter is programmed by a remote controller to detect packets meeting a particular criterion and to report detection of these packets to the controller (abstract). The figures and passages in Thadani cited by the Examiner describe methods of packet filtering, which can be used in tracing packets through a network (col. 4, lines 5-12). Thadani notes the use of this capability in order to analyze and report the type of packet traffic between certain nodes (col. 4, lines 48-55). An analysis can be performed to determine the nature of corruption of packets for traffic between the nodes (col. 4, lines 56-61).

Thadani, however, provides no details of the specific types of packets that might be detected in this manner, or of any specific tests or method of analysis that might be used in determining the nature of packet corruption. He makes no mention of the possibility that his filters might be used to distinguish between application-associated packets and other types of communication test packets. Consequently, Thadani cannot be taken to teach or suggest the step of observing a difference in the arrival characteristics of communication test packets relative to application-associated packets, as recited in claim 6. This claim is therefore believed to be patentable.

Independent claim 8 recites a method for testing of a computer application accessed via a communication network. A first computer runs an instance of the application. A first traffic agent also runs on this first computer, while a second traffic agent runs on a second computer. The first and second traffic agents exchange test data packets via the network so as to determine test packet exchange characteristics that are generally independent of the application. The instance of the application running on the first computer exchanges application data packets via the network with the second computer so as to determine application packet exchange characteristics. The exchange characteristics of the application packets and test packets are compared at a testing center.

Claim 8 was rejected on the same rationale as claim 6. As noted above, however, and acknowledged by the Examiner, the admitted prior art does not suggest making any sort of comparison between exchange characteristics of application and test packets as recited by claim 8. Moreover, as explained above with respect to claim 6, since Thadani does not teach or suggest that his filters might be used to distinguish between application data packets and other types of communication test packets, he cannot be taken to teach or suggest the step of comparing the exchange characteristics of the application packets and test packets, as recited in claim 8.

Thus, claim 8 is believed to be patentable over the cited art. In view of the patentability of claim 8, claims 9-11, which depend from claim 8, are also believed to be patentable.

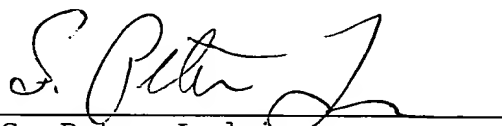
Independent claims 25 and 36, respectively, recite apparatus and a computer software product for testing a computer application, based on principles similar to the method of claim 8. These claims were rejected on the same rationale as the foregoing method claims, but are

believed to be patentable for the reasons stated above. In view of the patentability of the independent claims, dependent claims 26, 27 and 37, which depend from claims 25 and 36, are also believed to be patentable.

Applicant believes the remarks presented hereinabove to be fully responsive to all of the grounds of rejection raised by the Examiner. In view of these remarks, Applicant respectfully submits that all of the claims in the present application are in order for allowance. Notice to this effect is hereby requested.

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Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'S. Peter Ludwig', is written over a horizontal line.

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